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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

ET Docket No. 93-62

In the Matter of)
)
Guidelines for Evaluating)
the Environmental Effects)
of Radiofrequency Radiation)

To: The Commission

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PETITION FOR PARTIAL RECONSIDERATION

AirTouch Communications, Inc. ("AirTouch"), by its undersigned attorneys and pursuant to Section 405 of the Communications Act of 1934, as amended (the "Act") and Section 1.106 of the Commission's rules, hereby seeks reconsideration of certain portions of the Report and Order, FCC 96-326, released August 1, 1996, in ET Docket No. 93-62, Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (the "RF Order"). In support hereof, the following is respectfully shown:

I. Background

1. AirTouch is one of the world's leading providers of wireless mobile services. Pursuant to its authorizations from the Commission, AirTouch operates transmitting facilities at hundreds of antenna sites

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throughout the United States, providing cellular, paging, narrowband PCS, and other terrestrial wireless services. Consequently, AirTouch is substantially affected by the rules adopted by the Commission in the RF Order that require wireless licensees to conduct environmental evaluations of transmitting facilities to determine compliance with the newly-adopted Maximum Permissible Exposure ("MPE") limits, and to prepare environmental assessments if applicable MPE limits are exceeded.

II. The Commission Should Reinstate the Categorical Exclusion for Paging Facilities

2. The Commission historically has excluded specified categories of transmitting facilities from its environmental rules governing RF radiation exposure, based on a determination that the likelihood that such transmitters will cause exposures that exceed the Commission's guidelines is minimal. The RF Order abandons these "categorical exclusions" for certain services classified as Commercial Mobile Radio Services^{1/} that operate at greater than 1000 watts, and adopts rules requiring licensees of such facilities to conduct routine environmental evaluations and prepare environmental

^{1/} RF Order at para. 86.

assessments if applicable MPE limits, set forth in new section 1.1310 of the Commission's rules, are exceeded.^{2/}

3. AirTouch seeks reconsideration of the decision to eliminate the categorical exclusion for certain paging transmitters. The decision ignores a wealth of record evidence demonstrating that existing facilities in these services are unlikely to exceed the new MPE limits for RF emissions^{3/} and creates substantial new burdens for licensees.

4. The record is particularly suspect as to the elimination of the categorical exclusion for both tower-mounted (non-rooftop) antennas and rooftop high-power antennas for paging facilities operated under Parts 22 and 90 of the Commission's rules. Based on "an abundance of caution" -- rather than explicit scientific evidence contained in the record of this proceeding -- the Commission decided to subject most rooftop paging transmitters to evaluation if ERP exceeds 1000 watts. RF Order at para. 93. The Commission admits that "there is no evidence that typical installations in these services cause ground-level exposures in excess of" established limits,^{4/} yet has

2/ 47 C.F.R. §§ 1.1307(b)(1),(2) and Table 1.

3/ See RF Order at paras. 77-82.

4/ RF Order at para. 92.

adopted evaluation requirements for non-rooftop antennas mounted lower than 10 meters above ground and operating at greater than 1000 watts ERP and for all rooftop antennas operating at greater than 1000 watts ERP.^{5/}

5. The Commission's decision to proceed based on "generally worst-case assumptions"^{6/} rather than on the totality of the record makes clear that the elimination of the categorical exclusion for greater than 1,000 watt facilities is not necessary. Removal of the categorical exclusion for paging facilities will subject the paging industry, which operates on a very low revenue-per-unit basis, to substantial additional costs as well as burdensome reporting requirements under the Commission's environmental rules, a result that is at odds with the Commission's commendable efforts to reduce regulatory burdens on its licensees.

**III. The Site Owner, Not the Licensee,
Should Be Responsible for Determining
Compliance with MPE Limits and
Preparing Environmental Assessments**

6. The Commission determined in the RF Order to require individual station licensees to determine whether

5/ Id.

6/ RF Order at para. 91.

facilities are in compliance with exposure limits and to prepare an environmental assessment ("EA") if the limits are exceeded.^{7/} This decision also should be reconsidered. The responsibility for determining MPE limits and preparing EAs, to the extent they are required, should rest with the owner of the site at which the facilities are located, and not the individual tenant licensees. The site owner then could allocate the costs associated with these responsibilities across all tenant licensees. Imposing ultimate responsibility on the site owner is consistent with Commission precedent with respect to other environmental obligations, including antenna tower marking and lighting.^{8/}

7. There are compelling reasons for laying responsibility with the site owner, rather than with each individual licensee at a particular site. In many cases, a licensee will not know the frequency or operating parameters of transmission facilities operated by others at the same site, and cannot ascertain this information without incurring substantial costs. In any event, the site owner is the only party with knowledge of all of the site lessees' operational characteristics, and thus is in the best position to calculate MPE and determine whether a particular

7/ RF Order at para. 115, 47 C.F.R. § 1.1307(b)(1).

8/ See 47 C.F.R. § 17.6.

use would cause environmental problems. A licensee operating a single transmission facility among numerous co-located facilities can gather all necessary site information, if at all, only at great expense.

8. Moreover, the site owner alone controls the ability of tenants, maintenance personnel, and others to gain access to the site. Although the owner can impose certain standards for access to and use of the site on all licensees authorized to use the site, a single licensee can require only its own personnel to comply and has no ability to demand or enforce compliance by other co-located licensees.

9. A site owner can require, as a condition to entering into a space lease with a licensee, that the licensee provide all necessary data regarding the transmitting facilities and updated information as changes are made. A licensee has no comparable mechanism for compiling and maintaining current information, short of constant monitoring of the site. In any event, each licensee at a site must of necessity rely on the site owner for information about co-located existing and new licensees.

10. Finally, allowing co-located licensees to govern when a particular site would have to be turned off for monitoring and compliance purposes could result in anti-

competitive activity. For example, a paging competitor could "work" on a site for an extended period, thereby denying a competitor a service area advantage.

**IV. The Commission Should Clarify
the Obligations of Existing Licensees
When Site Characteristics Change**

11. The new rules in the RF Order could be considered to subject existing licensees to enforcement measures if a new licensee adds a facility at an existing site or if an existing licensee adds or modifies a facility at a site where one or more licensees already operate, and the new or modified facility causes the site to exceed applicable MPE limits.^{9/}

12. If the rules were construed to require existing grandfathered facilities to reevaluate MPE limits and file EA assessments under these circumstances, this would pose an enormous burden on licensees. The Commission should therefore clarify that existing licensees have no continuing obligation with respect to new or modified facilities at existing sites.

^{9/} As AirTouch reads the RF Order, existing facilities that are not modified or added to are not affected by the new requirements.

V. Conclusion


WHEREFORE, the foregoing premises duly considered, AirTouch Communications, Inc. respectfully requests that on reconsideration of the Report and Order in ET Docket No. 93-62 the Commission (i) reinstate the categorical exemption for paging facilities operating at less than 3500 watts ERP; (ii) impose ultimately responsibility for determining MPE limits and preparing EAs, to the extent they are required, on the owners of transmission facility sites; and (iii) clarify that existing licensees have no continuing obligation under the Commission's RF evaluation rules with respect to new or modified facilities at existing sites.

Respectfully submitted,

AIRTOUCH COMMUNICATIONS, INC.

Kathleen Q. Abernathy
Mark A. Stachiw
AirTouch Communications, Inc.
1818 N Street, N.W.
12221 Merit Drive
8th Floor
Washington, D.C. 20036
(202) 293-4960

By:



Carl W. Northrop
E. Ashton Johnston
Paul, Hastings, Janofsky & Walker
1299 Pennsylvania Avenue, N.W.
10th Floor
Washington, D.C. 20004
(202) 508-9500

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